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THE CANADIAN COMBINES INVESTIGATION ACT

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Investigation Act."

The policy of Canada with respect to industrial combinations is embodied in the Combines Investigation Act enacted by the federal parliament in May, 1910. This measure is the outcome of the successful working of the policy of investigation as applied to industrial disputes in the Industrial Disputes Investigation Act of 1907. This act had demonstrated publicity to be a real factor in furthering justice, and public opinion, intelligently formed, an effective instrument in the protection of innocent third parties against public wrongs arising out of a conflict of private interests. The act had served to minimize industrial strife as between great combinations of capital and labor, and it was believed that a similar method applied to industrial combinations in their relation to the great body of producers and consumers might aid in the prevention or removal of possible abuses. With the experience of the workings of this measure before it, and confronted with a popular demand for more effective control of industrial combinations, the parliament of Canada re-enacted in 1910 many of the clauses of the act of 1907 respecting the method and procedure of investigation with such changes and modifications as were necessary, and supplemented these by provisions framed with a view of affording relief in accordance with the disclosed need through public inquiry. The administration of the Combines Investigation Act like the administration of the Industrial Disputes Investigation Act was entrusted to the minister of labour, and it was as minister of labour in the administration of Sir Wilfrid Laurier, I had the privilege of submitting to parliament the act in question, and of piloting it through the Canadian House of Commons.

The Industrial Disputes Investigation Act provides that where in industries in the nature of public utilities, a strike or lockout is threatened, before such strike or lockout can be legally brought on the parties aggrieved must apply to the government for a board of investigation, to which board, each of the parties may elect repre-

sentatives, the chairman being the choice of the two selected representatives or, failing their agreement, the appointee of the government. The board thus constituted has all the powers of a court as respects examination of witnesses under oath, the compelling of testimony and the production of documents. Its findings, failing its ability to effect a settlement of existing differences by conciliation, become the official utterance through which public opinion is shaped and brought to bear on the situation into which inquiry is being made.

Adopting these general features and applying them to the case of producers and consumers who believe that competition is being unduly restricted or prices unfairly enhanced, it is provided in the Combines Investigation Act that where as respects an alleged combine an order for a board of investigation is obtained from any high court judge in the dominion, the government must forthwith appoint such a board, and in order that the inquiry may be as fair and as complete as possible, it is provided that each of the parties interested, namely the applicants for a board, and the persons believed to be concerned in the alleged combine may be represented on the board, which as in the case of the boards under the Industrial Disputes Investigation Act has a membership of three, the third member, who is also the chairman and who must be a judge of one of the courts of record, being appointed on the joint recommendation of the two first chosen members of the board, or on their failure to agree, by the government through the minister of labour.

Before entering upon his duties, each member of a board is required to swear that he will truly, faithfully and impartially perform his duties, that he is a British subject and has no direct pecuniary interest in the alleged combine that is to be the subject of investigation, and that he has not received and will not accept, either directly or indirectly, any perquisite, gift, fee, or gratuity from any person in any way interested in any matter or thing to be investigated by the board, and that he is not immediately connected in business with any of the parties applying for the investigation, and is not acting in collusion with any person therein.

For the purposes of investigation, every board has all the powers vested in any court of record in civil cases, that is to say, the right to summon and examine witnesses under oath, and the right to require the production of such books, papers or other documents or things as the board deems requisite to the full inves-

tigation of the matters into which it is inquiring. Whenever in the opinion of the minister of labour the public interest so requires, the minister of justice may instruct counsel to conduct the investigation before a board.

To obtain in the first instance an order for a board of investigation, the Act provides that the application for such a board may be made to any high court judge by any six persons, British subjects, resident in Canada and of full age, who are prepared to declare that a combine exists in respect to any article of trade or commerce, and that prices have thereby been enhanced or competition restricted to their detriment either as consumers or producers, and such order must be granted by the judge where the applicants are able to present *prima facie* evidence sufficient to satisfy the judge that there are reasonable grounds for believing that a combine exists which is injurious to trade, or has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held. All reasonable and proper expenses incurred in connection with an application for investigation may be paid on order of the judge out of an appropriation set apart for this purpose by parliament. Provision is also made in the statute whereby the necessary expenses of the investigation itself are met by the state. Publicity as respects the matters investigated is secured through the inquiry, the whole or any part of which may at the discretion of the board (the board here meaning any two of its members) to be held in public, and through the publication of the report and findings of the board in the *Canada Gazette* and in the public press.

The inquiry concluded, in the case of the Industrial Disputes Investigation Act further action is left to the parties themselves, and such influences as public opinion may cause to be exerted. In the case of the Combines Investigation Act, the legislation goes further, and a variety of means of redress is provided, the selection of which will depend upon the nature of the restriction or evil disclosed. The application of these remedies may, in some cases, be made by the government, in others, by the parties interested without government intervention.

Whenever, as the result of an inquiry, it appears to the satisfaction of the government that a combine exists with regard to any article to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and it appears that such

disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the government, without further legislation, or securing the consent of parliament, may direct either that such article be admitted free into Canada, or that the duty thereon be reduced to such amount or rate as in the opinion of the cabinet will give to the public the benefit of reasonable competition.

In case it should appear from the report of any board, that the holder of any patent issued under the patent act has made use of exclusive rights or privileges thereunder "so as to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article of trade or commerce, or to unduly restrain or injure trade or commerce in relation to such article; or unduly to prevent, limit or lessen the manufacture or production of any article, or unreasonably to enhance the price thereof; or unduly to prevent or lessen competition in the production, manufacture, purchase, sale, transportation, storage or supply of any article, such patents shall be liable to be revoked." In this respect the legislation is intended to supplement the provisions of the patent law of Canada against the abuse of patent rights. Where it is reported that a patent has been misused to any of the ends above mentioned, the minister of justice may apply to the exchequer court for its revocation.

It is provided also in the case of any combine or person reported by a board as guilty of restricting competition or of enhancing prices, and who thereafter continues in a course against which the board has pronounced, or fails to carry out a recommendation a board has made, that such combine or person is guilty of an indictable offense, and liable to a penalty not exceeding \$1,000 per day and costs during which such person so continues to offend for each day after the publication of the board's report in the *Canada Gazette*, or such further extension of time as in the opinion of the board may be necessary.

The findings of a board may also serve as a basis for effecting other remedies in the case of offending monopolies or corporations. For example, where licenses have been granted under the Canadian Inland Revenue Act and it is known that such licenses are being used as a means of restricting competition, their cancellation under the provisions of this act becomes both possible and probable. Similarly, the withholding or withdrawal by parliament of subsidies to shipping or transportation companies becomes an all but inevitable sequence

of disclosures by investigation of a combine operating to the detriment of the public.

This legislation respecting combines is in addition to the anti-combine sections of the criminal code of Canada which are in their nature declaratory of the common law as it is in Canada and in England. Prior to the enactment of the Combines Investigation Act a number of prosecutions were entered under these sections of the code, but it was a subject of constant complaint that proceedings were slow, uncertain and expensive and subject to restrictions which made it extremely difficult to secure convictions. In its consideration of the subject, parliament did not deem it wise to rescind these sections, but left the criminal law as it stood, so that the penalties there provided might the more easily be enforced should they be deemed to be, after investigation of conditions, the most suitable and effective form of punishment of offenders.

It will be seen that in dealing with industrial combinations the parliament of Canada has shaped its policy in the light of three important considerations. First, that it is the possible inimical effects of combination and not combination as such that is to be aimed at in legislation. There is impliedly an admission that combination not only is not a bad thing, but that it is an inevitable and necessary development. Recognizing the industrial trend of the times, it is frankly conceded, that exception cannot well be taken by the state to a trust, or a combine, or a merger, as such, or to these industrial combinations doing all that is justifiable to further the interests of those whose capital they employ; on the other hand, it is not less clearly foreseen that the very necessity and inevitability of large combination mean that tremendous power becomes vested in the hands of a few, and that with this consolidation of great power, the sense of obligation on the part of those entrusted with the shaping of policies and management of affairs is likely to be felt primarily with reference to the concern itself, and those who are investors in it, and only secondarily to the public whose interests become subordinate to special corporate interests.

In the second place, it is tacitly implied that it is the duty of government to secure to the community some of the advantages which the community itself makes possible, and to conserve to those who compose the state, some of the benefits which through its agencies, the state itself helps to create. The advantages of large

organization are conceded, but it is recognized that the form of organization which enables wealth to become concentrated in the hands of a few, and secures great commercial opportunities and powers, is itself rendered possible only through conditions created by society of whose interests the state is the guardian, and by the direct agencies of government itself. To mention only what is most obvious. Organization on a large scale is alone rendered possible by the peace and security which the state assures, and in the maintenance of which, the heaviest expenditures of government are incurred. The facilities of transportation and communication, of banking, of credit, on which industrial combinations are dependent for their very existence, are the outcome of concessions made by the public, and are in the nature of agencies promoted by the aid, or at the expense of the state. In other words, an organized community is essential to the work of production and distribution and the extent of organization determines in large measure the possibilities and degree of both. In this view of the relation of industrial combination to the community, it becomes the duty of government to see that the interests of the many who compose the state, are not sacrificed to the interest of the few whose powers and opportunities they have helped to create.

Lastly, it is recognized that there are certain evils in the prevention and removal of which publicity is more effective than penalty, and that no single remedy can be found for all the possible abuses that may arise. A knowledge of facts and circumstances is a necessary preliminary to intelligent action, and as respects a set of conditions which may be affecting it adversely, the public may be expected once it is fully apprised of their nature and extent to devise some means to protect itself against continued injustice and wrong. Where public confidence and approval is an essential to business success, the fear of exposure is the real deterrent of wrong. This the legislation in question seeks to secure, and to do so at the expense of the state.

Since its enactment, the Combines Investigation Act has been thoroughly tested in the courts, the litigation arising out of an order granted in February of last year by one of the Quebec judges for an investigation under the act of the business of the United Shoe Machinery Company in respect of an alleged combine in the manufacture and sale of boot and shoe making machinery. The com-

pany sought to delay and prevent investigation proceedings by raising technical and other objections to methods of procedure, and the rights of the parties to secure, as well as the powers of the government to compel an inquiry in accordance with the provisions of the statute. This being the first case under the act, every latitude was allowed the company to test its effectiveness at all points. Having exhausted the courts of the Dominion in its applications for injunctions, and appeals, the company sought leave to appeal to the judicial committee of the Privy Council in England; this body, the highest and final court in the British Empire, refused to grant such leave and thus admitted the rights of the applicants to an inquiry, and the government's power to compel an investigation in accordance with the provisions of the statute. The board which had been constituted prior to the appeal, but whose proceedings were stayed pending the hearing of the application for leave to appeal, commenced its investigation immediately after the decision of the Privy Council refusing leave became known, and the inquiry has continued since. Until concluded it would be improper to comment on the proceedings before the board, but this much may be said, that the inquiry has demonstrated the effectiveness of the machinery provided by the act as a means of disclosing actual conditions. Moreover, this case having afforded the means of effectively testing the constitutionality and legality of proceedings under the act, the measure may be regarded as having found a permanent place in the statutes of the Dominion. Upon the report of the board, it will be seen whether in the public interest, the conditions it discloses will require alterations, and whether the remedies specified are sufficient to meet the public needs. It is altogether probable they will, but should the provisions of the act appear inadequate in any particular, parliament, having the precise conditions before it, may be expected to meet deficiencies by special legislation.